

JUL 31 1997

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

CC Docket # 96-98  
~~CCB/CPD 97-30~~

In the Matter of )  
)  
Request by ALTS for Clarification of the )  
Commission's Rules Regarding ) CCB/CPD 97-30  
Reciprocal Compensation for ) DA 97-1399  
Information Service Provider Traffic )

**REPLY COMMENTS OF THE  
INTERNET ACCESS COALITION**

The Internet Access Coalition ("IAC")<sup>1</sup> submits these reply comments in the above-captioned docket. The Commission established this proceeding to consider the petition filed by the Association of Local Telecommunications ("ALTS") for clarification of the Commission's rules regarding reciprocal compensation for the transport and termination of traffic to subscribers of competitive local exchange carriers ("CLEC") who are information service providers ("ISPs").<sup>2</sup> ALTS filed its Petition in response to actions taken by NYNEX/Bell Atlantic and threats by other Incumbent Local Exchange Carriers ("ILECs") to stop paying reciprocal compensation when calls placed to ISPs

<sup>1</sup> IAC includes companies and associations dedicated to maintaining affordable consumer access to the Internet. IAC member companies include America Online Incorporated, Apple Computer, Inc., Compaq Computer Corporation, CompuServe Incorporated, Dell Computer Corp., Digital Equipment Corporation, EarthLink Network, Inc., Eastman Kodak Company, GE Information Services, IBM Corporation, Intel Corporation, Microsoft Corporation, Netscape Communications Corporation, Novell, Inc., Oracle Corporation and Sun Microsystems, Inc. IAC member associations include the Electronics Association, the Business Software Alliance, the Consumer Electronics Manufacturers Assn., the Information Technology Association of America, the Information Technology Industry Council, the Internet Service Providers and Users Association, the Software Publishers Association and the Voice on the Net Coalition.

<sup>2</sup> Pleading Cycle Established for Comments on Request by ALTS for Clarification of the Commission's Rules Regarding Reciprocal Compensation for Information Service Provider Traffic, *Public Notice*, CCB/CPD 97-30, DA 97-1399 (July 2, 1997) ("*Public Notice*").

2

originate on the ILEC's network and terminate on a CLEC network. ALTS asked the Commission to clarify that nothing in the Commission's Local Competition Order<sup>3</sup> or the Telecommunications Act of 1996<sup>4</sup> changed the Commission's long-standing rule of treating ISP traffic as local telecommunications traffic. Over 30 parties filed comments in response to ALTS' Petition.

IAC supports the position taken by MCI Telecommunications Corporation ("MCI"), Sprint Corporation ("Sprint"), America Online, Inc. ("AOL"), CompuServe Incorporated ("CompuServe"), ACC Corp. ("ACC"), Hyperion Telecommunications, Inc. ("Hyperion"), Vanguard Cellular Systems, Inc. ("Vanguard")<sup>5</sup> and other commenters who oppose the exclusion of ISP traffic from reciprocal compensation arrangements. IAC agrees that, consistent with long-standing practices and the Commission's rules and policies, the ILECs cannot unilaterally exclude traffic terminated by CLECs to ISPs from reciprocal compensation arrangements. The comments accurately note that nothing in the 1996 Act or the Commission's Local Competition Order allows ILECs to treat traffic terminated to a local ISP differently from other local traffic under reciprocal

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<sup>3</sup> Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *First Report and Order*, 11 FCC Rcd. 15499 (1996), *vacated in part, Iowa Utils. Bd. v. FCC*, No. 96-3321 (8th Cir. Jul. 18, 1997).

<sup>4</sup> Communications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56. The 1996 Act amends the Communications Act of 1934, 47 U.S.C. §§ 151 *et seq.*

<sup>5</sup> Comments of MCI ("MCI Comments"), Comments of Sprint ("Sprint Comments"), Comments of AOL, Comments of CompuServe, Comments of ACC ("ACC Comments"), Comments of Hyperion ("Hyperion Comments"), Comments of Vanguard, filed in response to *Public Notice*.

compensation arrangements.<sup>6</sup> The Commission has stated repeatedly that ESPs and ISPs are to be treated no differently from other end users of local exchange services.<sup>7</sup> This position was reaffirmed most recently in the Commission's Access Charge Reform Order.<sup>8</sup> IAC also agrees with commenters that reciprocal compensation for ISP traffic will promote the deployment of innovative technologies and new services and encourage carriers to transmit data in the most efficient manner – goals consistent with the Act and the Commission's policies.<sup>9</sup>

Several ILECs and USTA oppose the position advocated by ALTS in its Petition.<sup>10</sup> Their position has at least two fatal flaws.

First, the aggressive self-help mechanism applied unilaterally by NYNEX/Bell Atlantic in its interconnection negotiations circumvents and

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<sup>6</sup> Comments of KMC Telecom, Inc., at 4-5, Comments of GST Telecom, Inc. ("GST Comments") at 1-2, filed in response to *Public Notice*; Hyperion Comments at 3-5. Certainly, given the Eighth Circuit's recent decision vacating FCC Rule 51.701, nothing in the Local Competition Order could be read as changing the treatment of ISP traffic.

<sup>7</sup> See Comments of AT&T Corp. at 2-3; Comments of Teleport Communications Group Inc. at 2-3, Comments of Adelphia Communications Corporation, *et. al.* at 12, Comments of American Communications Services, Inc. at 4-5, Comments of Focal Communications Corporation at 5, filed in response to *Public Notice*; GST Comments at 3-4; MCI Comments at 2-3; Sprint Comments at 3-4.

<sup>8</sup> Access Charge Reform, *First Report and Order*, 62 Fed. Reg. 31868, at ¶¶ 344-348 (June 11, 1997) ("Access Order").

<sup>9</sup> See, e.g., Comments of Intermedia Communications, Inc. filed in response to *Public Notice* at 5-6.

<sup>10</sup> See Comments of Ameritech Operating Companies, Comments of Southern New England Telephone Company, Comments of Cincinnati Bell Telephone Company, and Comments of The United States Telephone Association and Member Companies, filed in response to *Public Notice*.

prejudges the Commission's existing proceeding to develop an appropriate regulatory regime for ILEC services provided to Internet users.

In December 1996, the Commission released a Notice of Inquiry ("*Internet Access NOI*") initiating a proceeding to consider the issues raised by the development of the Internet and other information services.<sup>11</sup> In the *Internet Access NOI*, the Commission sought comment on a variety of questions regarding the appropriate regulatory treatment of the public switched telephone network in light of the development of and demand for new information technologies. The Commission emphasized its commitment to policies that would not hinder the development of emerging packet-switched data services.<sup>12</sup>

The *Internet Access NOI* is a more suitable proceeding for addressing the ILEC's concerns over the treatment of ISP traffic. The proceeding was specifically initiated to collect information and analyses and to develop a useful record regarding the complex and crucial issues surrounding the deployment of new data and information technology services like those provided by ISPs. The Commission expressly requested comment on the effects of the current regulatory and pricing system on network usage, ILEC cost-recovery, and the development of the information services marketplace.<sup>13</sup> The Commission also

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<sup>11</sup> Usage of the Public Switched Network Information Service and Internet Access Providers, *Notice of Inquiry*, 11 FCC Rcd. 21354, ¶ 311, *et seq.* (Dec. 24, 1996) ("*Internet Access NOI*").

<sup>12</sup> *Id.* at ¶ 311.

<sup>13</sup> *Id.* at ¶ 315.

asked whether it should use its forbearance or preemption authority to avoid results that would hamper the development of new technologies.<sup>14</sup>

The *Internet Access NOI* proceeding will develop the factual and record analysis for determining whether any change in the status quo regarding ILEC treatment of ISP traffic is needed. Until the *Internet Access NOI* proceeding is concluded, the Commission has no factual or analytical basis for disturbing the status quo nor should the ILECs be permitted to do so unilaterally by refusing to compensate CLECs for transporting and terminating ISP traffic. The Commission should not permit parties to ignore existing rules and policies and should instead encourage parties to follow and participate in the open regulatory procedures established by the Commission.

The second flaw in the NYNEX/Bell Atlantic approach is the fundamental inconsistency between NYNEX/Bell Atlantic's jurisdictional treatment of ISP traffic for purposes of interconnection agreements with CLECs and its treatment of the same traffic for separations and rate-making purposes. NYNEX/Bell Atlantic claims that it can exclude ISP traffic from reciprocal compensation arrangements because the traffic is interstate. But NYNEX/Bell Atlantic *includes* the same traffic as intrastate traffic when it applies the jurisdictional separations and access rules to develop its costs and rates for intrastate and interstate services.

ALTS noted in its petition an additional inconsistency in NYNEX/Bell Atlantic's treatment of ISP traffic – NYNEX/Bell Atlantic continues to treat ISP

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<sup>14</sup> *Id.* at ¶ 314.

traffic exchanged with adjacent ILECs as local even though it treats the same traffic as interstate when it is exchanged with a CLEC.<sup>15</sup> The New York Public Service Commission noted this discrepancy between the ILECs' interstate claims and their treatment of intrastate tariffs in its cease and desist letter.<sup>16</sup> To facilitate the emergence of competition in local exchange markets, the Commission cannot permit ILECs to discriminate between new entrants and other ILECs in their treatment of these interconnection arrangements.

### **CONCLUSION**

In light of the factors and analyses described above, the IAC supports the ALTS Petition for Clarification and the commenters who support it. The

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<sup>15</sup> Letter from Richard J. Metzger, ALTS, to Regina M. Keeney, Chief, Common Carrier Bureau, FCC (June 20, 1997) ("ALTS Petition"), at 7.

<sup>16</sup> See Letter from Allan Bausback, Acting Director, Communications Division, NY PSC to William Allan, Vice President, New York Telephone Co. (May 20, 1997), attached to the ALTS Petition. The letter only addresses NYNEX, but its logic applies to all of the ILECs.

Commission should clarify that the policy and regulatory status quo was not changed by the Commission's Local Competition Order or the 1996 Act.

Respectfully submitted,

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July 31, 1997

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## CERTIFICATE OF SERVICE

I, Dave Raksin, hereby certify that on this 31st day of July 1997, true and correct copies of the Reply Comments of the Internet Access Coalition in the matter of the Association of Local Telecommunication's Request for Clarification of the Commission's Rules Regarding Reciprocal Compensation for Information Service Provider Traffic, CCB/CPD 97-30, were served by hand delivery upon the following parties:

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